

R E M A R K S

- Claims **10-61** are currently pending;
- Claims **10-41** have been withdrawn;
- Claims **42-61** are rejected.
- Of the pending claims, claims **42, 43, 49 and 50** are independent;
- Claims **42-61** are in condition for allowance.

1. Section 102 Rejections

Claims **42-55, 57-58 and 60-61** stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,012983 to Walker et al. ("Walker" herein). Applicants respectfully traverse the rejection of these claims based on the reasons presented below.

1.1 Independent Claims 42, 43, 49 and 50

It is well settled that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicants respectfully traverse these rejections for the reasons set forth below.

The Examiner asserted that Walker discloses the recited elements of claims **42, 43, 49 and 50** including "supplying the player with a communication device (3:55-56, ref 6 – pager or cellular telephone) ... enabling communication between player and individual via the portable communication device (sic)". (Office Action, page 2, section 2).

Applicants assert that, contrary to the Examiner's assertions, each of independent claims **42, 43, 49 and 50** recite the following limitation that is not taught or suggested by Walker:

- *enabling communication between the player and the individual via the portable communication device*

Applicants note that the Examiner offers no citation for the recited step of *enabling communication between the player and the individual via the portable communication device* other than by cryptic reference to “(sic)”. Regardless, the Examiner does identify “player communication device **6**” as corresponding to the claimed portable communication device.

Applicants respectfully note that, in fact, Walker discloses communication between the slot network server **4** and the communication device **6**. For example, Walker discloses at col. 4, lines 6-11:

The slot machine 2 communicates the machine messages and outcome data to the slot network server 4, which, in turn, communicates the information to the player communication device 6. Communications device 6, for example a pager including a display, provides sufficient information to permit the player to follow and enjoy the play, and in some cases to authorize necessary or desired changes in the play.

Applicants respectfully note, as is evident from the passage above, that Walker does not disclose communication between the communication device and an *individual* as claimed. For this reason alone, all of independent claims **42, 43, 49 and 50** are in condition for allowance. As all of claims **44-48 and 51-61** depend upon claims **42, 43, 49 and 50** and incorporate all of the elements and limitations of

claims thereof, claims **44-48 and 51-61** are likewise in condition for allowance.

2. Section 103 Rejections

Claims **42** stands rejected under 35 U.S.C. 103(a) as being unpatentable over Finnegan. (“Finnegan” herein). Applicants respectfully traverse the rejection of this claim based on the reasons presented below.

The Examiner asserted that the disclosure of Finnegan “lacks [a teaching of] obtaining a player identifier from the player as noted by Applicants remark (p 10-11). It would have been obvious to an artisan at a time prior to the invention to add obtaining an identifier from the player to Finnegan’s method for security or to charge user account if not returned or for its use. Similarly, by analogy to a person checking out (i.e. borrowing) a book from a library by obtaining a persons identifier to have on record which person is assigned which book, it would have been obvious to obtain a player identifier for use of the cellular phones discussed by Finnegan to know which player obtained use of a phone to ensure its return or to know whom to charge for its services.” (Office Action, page 3, section 3).

Applicants note that it is well settled, as stated at MPEP §2143, that "When the prior art teaches away from combining certain known elements, discovery of successful means of combining them is more likely to be nonobvious." *KSR*, 550 U.S. at ___, 82 USPQ2d at 1395."

Applicants further note that §2144.03(A) clearly states that “It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well

known are not capable of instant and unquestionable demonstration as being well-known.”

In light of these well established precepts, Applicants respectfully assert that the Examiner’s presumed assertion of official notice is not appropriate and further, assuming, arguendo, such official notice to be appropriate, the Examiner’s assertion actually offers support the factual nature of the assertion that the teachings of Finnegan in fact teach away from obtaining a player identifier.

First, the Examiner provides no evidence, let alone substantial evidence, as to what would or would not be known to one skilled in the art of Finnegan’s method for security at the time of the invention. As a result of this deficiency in establishing a *prima facie* case of obviousness, Applicants proceed under the assumption that the Examiner is taking official notice that it would have been obvious to one so skilled to modify the teachings of Finnegan in accordance with the well known analogous practice of checking out a book from a library.

Applicants allow that the practice of obtaining an identifier from a person seeking to check out a book for removal from the premises of a library is well known. Applicants note that it is further well known to not require an identifier of a person if the book is not to be “checked out”. Such is the nature of open stacks. Applicants further note that many libraries have reading rooms where individuals may peruse books to their hearts content without providing an identifier. Once again, in such instances, an identifier is required only if the book in question is to be “checked out” or otherwise placed in

the extended dominion and control of the person wishing to leave with the book.

Applicants note that Finnegan clearly states that “They could become the latest innovation in casino hospitality –“call girls” walking around blackjack tables and slot machines offering cellular phones to **people who don’t want to leave a game to make a call.**” (emphasis added). It is evident from this description that the people to whom the phones are offered will not be removing the phones from the presence of the call girls. Specifically, the blackjack tables and slot machines around which the call girls ply their trade are the very “games” from which their prospective clients do not desire to leave. It is therefore evident that assuming, arguendo, that knowledge of checking out books was well known, such knowledge would be, contrary to the Examiner’s assertion, not analogous to the disclosures of Finnegan.

In fact, a proper application of the analogy of the Examiner makes clear that, as in a library when a person wishes to view a book without checking it out, the disclosure of Finnegan actually teaches away from obtaining an identifier from a person wishing to receive a phone from a call girl. Specifically, as the call girl is presumably at all times within close proximity to the user of the phone, Finnegan teaches away from obtaining an identifier to, as the Examiner asserts, “ensure its return or to know whom to charge for its services”.

For all of these reasons, Applicants assert that claim **42** is in condition for allowance.

Applicants note that the Examiner further rejected claims **56** and **59** under 35 U.S.C. 103(a) as being unpatentable over Walker.

Applicants refer to section 1.1 of this Action wherein it is asserted that claims **56** and **59** are in condition for allowance.

Conclusion

For the foregoing reasons it is submitted that all of claims **42-61** are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Jeffrey Ambroziak at telephone number (203) 461-7317 or via electronic mail at jambroziak@walkerdigital.com.

Applicants are filing this response within the three month statutory time for reply and, as a result, no petition for an extension of time is necessary. If any additional fees should be necessary for the present Application at this time (or any time during the prosecution of the present Application), please charge any such required fee to our Deposit Account No. 50-0271. Please credit any overpayment to Deposit Account No. 50-0271.

Respectfully submitted,

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Date

/Jeffrey R. Ambroziak, Reg. No. 47,387/
Jeffrey R. Ambroziak
Attorney for Applicants
Registration No. 47,387
jambroziak@walkerdigital.com
(203) 461-7317/ voice
(203) 461-7318/fax